

Memorandum

To: Karen Douglas, Chairman
Jeffrey D. Byron, Commissioner, Presiding Member
James D. Boyd, Vice Chair, Associate Member
Paul Kramer, Hearing Officer

Date: April 28, 2009

Telephone: (916) 654-4489

From : **California Energy Commission** -- Loreen R. McMahon, Associate Public Adviser
1516 Ninth Street
Sacramento CA 95814-5512

Subject: **Public Participation in Joint NEPA/CEQA Documents (Ivanpah)**

This memo will provide the Committee with the Public Adviser's Office perspective regarding public participation in renewable energy siting cases that require coordination between the Energy Commission and the U.S. Bureau of Land Management (BLM).

It is the duty of the Public Adviser to advise the Energy Commission on "... measures to assure full public participation in the commission's proceedings." Accordingly, "the adviser shall render his or her independent advice on commission procedures that in the adviser's view will provide the optimum of public participation to benefit the commission in its work." (California Code of Regulations, Title 20, Section 2555(b))

Executive Order S-14-08, which focuses on renewable energy development and standards, underscored the Memorandum of Understanding (MOU) between the Energy Commission and the BLM establishing a coordinated permitting approach with our federal partners. Toward this goal of coordination, there are many facets to the collaboration between the Energy Commission and BLM, one of which is public participation. This was recognized as a stated purpose of the MOU, including shared preparation and analysis in a public process, avoiding duplication of effort, promoting intergovernmental coordination at all levels and, "...[*facilitating*] public review by providing a joint document and a more efficient environmental review process." (Italics added, MOU between BLM and Energy Commission "Concerning Joint Environmental Review for Solar Thermal Power Plant Projects," August 2007)

Both the National Environmental Protection Act (NEPA) and the California Environmental Quality Act (CEQA) have provisions to join the processes and streamline when appropriate to benefit the public. Public Resources Code, Section 21003, states that agencies be efficient and expeditious "in order to conserve the available financial, governmental, physical, and social resources..." Further, CEQA Guidelines Section 15226 provides that, "[s]tate and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between

Karen Douglas, Chairman
Jeffrey D. Byron, Commissioner, Presiding Member
James D. Boyd, Vice Chair, Associate Member
Paul Kramer, Hearing Officer
April 28, 2009
Page 2

[CEQA] and [NEPA]...to the fullest extent possible..." In NEPA practice, the focus is on reducing the burden on the public, including the amount of material that the public must read, as well as the number of events they must attend. Both federal and state statutes intend for a sincere commitment to an open, comprehensible, and consistent public participation process, with a focus on earnestly developing public input and trust.

On April 9, 2009, the Ivanpah Solar Electric Generating System (Ivanpah) applicant proposed a schedule that has notable implications with respect to public participation. The Public Adviser's Office reviewed the Ivanpah applicant's proposed schedule and is concerned that it may impede public participation by creating a circumstance of two separate comment periods. With a desire to prevent confusion, and to avoid unnecessary criticism of procedural issues in this proceeding and those that will follow, it would be easier for the public to participate if a single combined public comment period is established.

The current scheduling agreement between the Energy Commission and BLM is to pair the Final Staff Assessment (FSA)/Draft Environmental Impact Statement (DEIS). The applicant's proposed schedule raises concerns, chief of which for the Public Adviser's Office is the lack of an effort to conform the processes to both state and federal regulations. Such a schedule as proposed may cause the CEC and the BLM to look disingenuous in the eyes of the public, particularly when it would create two different schedules for comments on a single document. For these reasons, the Public Adviser's Office sees a benefit in the creation of one comment period of the same length to be set forth for public comments on Energy Commission/BLM joint documents, such as the FSA/DEIS.

It is the hope of the Public Adviser's Office that the procedural question of public comment in the Ivanpah proceedings could serve as a model for future renewable projects. Since this issue is applicable to all siting projects with joint BLM documents, the Public Adviser's Office is available to discuss this as an agenda item to the Siting Committee.

LOREEN R. McMAHON
Associate Public Adviser